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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

Estate of ANNIE MEDINA, Deceased.

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WILLA MAE MEDINA,

Petitioner and Appellant,

v.

ROGER MEDINA, as Administrator etc.,

Objector and Respondent.

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B183542

(Los Angeles County  
Super. Ct. No. BP070459)

APPEAL from the order of the Superior Court of Los Angeles County. William F. Highberger, Judge. Affirmed.

Willa Mae Medina, in pro. per., for Plaintiff and Appellant.

Law Offices of Smith & Smith, Lee S. Smith and David S. Smith for Objector and Respondent.

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Willa Mae Medina appeals from the order denying her motion to set aside a probate court judgment that determined she did not own a life estate in her late mother's home, contending that the hearing was held without sufficient notice. Because Medina did not object to lack of notice and contested the matter on the merits, we hold that any notice deficiencies were waived, and therefore affirm the order.

### **FACTS AND PROCEDURAL HISTORY**

Willa Mae Medina petitioned the probate court to determine that she owned a life estate in the home of her late mother, Annie Medina, contending that her siblings wrongly sought possession of the house.<sup>1</sup> A trial on both the petition and a cross-petition by Roger Medina, the administrator of Annie Medina's estate, was held in January 2005. Medina was in the middle of being cross-examined when a brief recess was granted. Medina returned more than 30 minutes late. In her absence, the court concluded the hearing, found that Medina was not credible, dismissed her petition, and granted the estate administrator's cross-petition to have Medina vacate the house. When Medina returned to the courtroom, she said she did not know when she was due back.

Medina later moved to set aside the judgment on the ground that she was delayed by her need to use the restroom and that she did not understand there was insufficient time to do so. At the April 13, 2005, hearing on the set aside motion, the court issued a tentative decision to grant the motion in order to rule based on a complete record, but withdrew the tentative and stayed the matter when Medina said she had filed for bankruptcy. Two days later, Medina notified the court that her bankruptcy action had been dismissed. On April 28, 2005, Medina filed an ex parte application for an order allowing her return to the house until her still pending motion to set aside the judgment could be heard.

Medina appeared for the April 29 ex parte hearing with her friend and companion, Margarita Baez, who was with Medina during the trial on her probate petition and was a

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<sup>1</sup> We will refer to the home that is the subject of this dispute as "the house."

witness to the events surrounding Medina's delayed return to the trial. The court said it would take evidence that afternoon on Medina's motion to set aside the probate judgment and ordered both Medina and Baez to return at that time. When the afternoon hearing began, the court said it would allow Medina to supplement the showing in her motion to set aside the judgment with testimony from her and Baez, and would then rule on the merits of that motion. When the court asked Medina if she had any objections to proceeding in that fashion, Medina answered "No, sir."

Medina and Baez testified and were also cross-examined by opposing counsel.<sup>2</sup> Even though Medina's declaration in support of her motion did not mention Baez and said that the delay had been caused by Medina's need to use the restroom, Medina testified she was in fact delayed because Baez is a diabetic and needed to find something to eat. Medina also admitted that she had heard the court say when she was to return, but that Baez had heard differently. Baez confirmed that she was a diabetic, and that Medina was taking her to find food. However, she also gave conflicting testimony about what happened, first stating that she mistakenly told Medina they had more time, then saying she did not speak much English, had no understanding of what the court said about when to return, and denied telling Medina how long the recess was supposed to be. On cross-examination by Medina, Baez returned to her original position that she might have said they had a longer recess. Baez also said that Medina disputed Baez's time estimate and kept telling her they had less time. The court denied Medina's motion to set aside the judgment because Medina was not credible. The court pointed out the conflicts between Medina's declaration and her testimony at the hearing, along with the conflicts in Baez's testimony. It also focused on Medina's admission that she had in fact heard the court announce the correct time she was due back.

Medina makes one contention on appeal: that the purpose of the April 29 hearing was to determine her ex parte application to return to the house, and that she did not

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<sup>2</sup> Medina represented herself at this hearing and examined her own witnesses – both herself and Baez.

receive any notice that the court would hear her motion to set aside the judgment on the merits at that time.

### **DISCUSSION**

When a party appears at a hearing and opposes a motion on its merits, she has waived any defects or irregularities in the notice of the motion, including the absence of any notice at all. As a result, when a party appears and contests a motion in the trial court, she cannot appeal on the grounds that no notice was given, or that notice was defective. (*Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697.) Even though Medina was representing herself, she was bound by this rule. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) On the morning of April 29, 2005, when the court was to hear Medina's ex parte application to regain possession of the house, the court announced that it would hear Medina's motion to set aside the probate judgment that afternoon. When the afternoon session began, the court asked Medina whether she had any objections to proceeding, and she answered no. Evidence was taken and the matter was decided on the merits. Any objections concerning notice of the hearing were therefore waived.<sup>3</sup>

### **DISPOSITION**

For the reasons set forth above, the order denying Medina's motion to set aside the probate court judgment is affirmed. Respondent to recover his costs on appeal.

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RUBIN, J.

We concur:

COOPER, P. J.

BOLAND, J.

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<sup>3</sup> Medina contends she was prejudiced by the lack of notice, but does not explain how.